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The Tradition of Capture Marriage in Sumba: A Review from the Perspective of Indonesian Positive Law

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Original Article

Abstract

This study examines the practice of capture marriage in Southwest Sumba, Indonesia, with a focus on how this traditional custom has evolved into a violation of women's rights. Historically, this practice involved mutual consent between families; however, recent cases demonstrate its transformation into acts of forced marriage and violence against women. The research utilizes a normative methodology, analyzing the tradition through the lens of Indonesian positive law, including Marriage Law No. 16 of 2019, Sexual Violence Crimes Law No. 12 of 2022, and Human Rights Law No. 39 of 1999. The study reveals that current instances of capture marriage often involve criminal elements such as physical violence, verbal abuse, and sexual assault. Although Article 18B of the 1945 Constitution recognizes customary laws, such practices must be consistent with societal development and state principles. The study concludes that capture marriage, in its present form, should be eradicated as it violates women's rights and contradicts contemporary legal frameworks.

Keywords: *Capture Marriage, Cultural Shift, Violence, Sexual*

Abstrak

This study examines the practice of marriage by capture in Southwest Sumba, Indonesia, focusing on how this traditional custom has evolved into a violation of women's rights. While historically this practice involved mutual consent between families, recent cases demonstrate its transformation into acts of forced marriage and violence against women. The research employs a normative methodology, analyzing the tradition through the lens of Indonesian positive law, including Marriage Law No. 16 of 2019, Sexual Violence Crimes Law No. 12 of 2022, and Human Rights Law No. 39 of 1999. The study reveals that current implementations of capture marriage often involve elements of criminal behavior, including physical violence, verbal abuse, and sexual assault. Although Article 18B of the 1945 Constitution recognizes customary laws, such practices must align with societal development and state principles. The research concludes that capture marriage in its current form should be eradicated as it violates women's rights and contradicts contemporary legal frameworks.

Kata kunci: *Kawin Tangkap, Pergeseran Budaya, Kekerasan, Seksual*

1. INTRODUCTION

Humans are inherently social beings who cannot live in isolation. From birth, they are destined to form connections, often in pairs. This innate nature encompasses the relationship between men and women who build their lives together. Furthermore, humans are also tasked with continuing their lineage, ensuring the perpetuation of human existence on Earth. In a legal context, the definition of marriage in Indonesia is regulated under Law Number 16 of 2019, which amends Law Number 1 of 1974 concerning Marriage. Article 1 of this law defines marriage as a physical and spiritual union between a man and a woman as husband and wife. The primary purpose of this bond is to establish a happy and enduring family or household, founded on the values of the Almighty God.

Beyond the legal definition, scholars have also provided insights into the concept of marriage. One such expert, Wirjono Prodjodikoro¹, offers a more nuanced explanation, describing marriage as cohabitation between a man and a woman who meet specific requirements. His perspective highlights that marriage is not merely a legal contract but also a commitment and a shared responsibility between the parties involved. Marriage holds a vital place in human social life. It is not only a relationship between individuals but also a moral, social, and religious institution. The ultimate goal of marriage, as recognized by law, culture, and religion, is to create a happy and lasting union.

Marriage is considered a sacred institution, signifying a commitment that transcends mere affection between two individuals. Both partners must fully understand and embrace the responsibilities and commitments associated with married life. Each spouse plays a lifelong role in upholding the marriage, which underscores its sacred and essential nature.² Indonesia, with its rich cultural diversity, has preserved various traditional forms of marriage passed down from ancestors, including customary marriage practices.

In Sumba, one notable traditional practice is capturing marriage, particularly in Southwest Sumba. Historically, this practice was often carried out by men from affluent families who sought to marry a woman of their choice. The process typically involved the man pretending to abduct the woman in a public setting, such as a market, festival, or roadside. This act, however, was contingent on prior agreement between the two families involved. Such mutual consent served as a strong legitimacy for the capture marriage tradition.³

While this practice has cultural significance, issues arise when one party does not agree to the arrangement. In these cases, women are the most vulnerable and affected. During the capture process, women may face physical violence (such as being restrained,

¹ Wirjono Prodjodikoro, *Hukum Perkawinan Di Indonesia* (Bandung: Sumur Bandung, 1966).

² Harry Yuniardi and Muhamad Kholid, *Tradisi Piti Rambang (Kawin Tangkap) Dalam Perspektif Fiqh Dan Hukum Perkawinan Indonesia*, ed. Elan Jaelani, 1st ed. (Bandung: Penerbit Widina Media Utama, 2024).

³ Elanda Welhelmina Doko, I Made Suwitra, and Diah gayatry Sudibya, "Tradisi Kawin Tangkap (Piti Rambang) Suku Sumba Di Nusa Tenggara Timur," *Jurnal Konstruksi Hukum* 2, no. 3 (2021): 656–60, <https://doi.org/10.22225/jkh.2.3.3674.656-660>.

pulled, or grabbed), verbal abuse (resulting in trauma, distress, or humiliation), and even sexual violence (including inappropriate physical contact or assault).⁴

This article examines a case of marriage by capture that occurred in Southwest Sumba. The incident took place on Thursday, September 7, 2023. According to Ariasandy, the victim, referred to as “D,” and her uncle were stopping in front of a shop in Waimangura Village, West Wewewa District. While the uncle parked his motorbike to purchase cigarettes at the shop, a group of approximately 20 perpetrators arrived. These young men forcibly apprehended and kidnapped “D,” a 20-year-old woman, placing her on a pickup truck and taking her away.⁵

The tradition of marriage by capture in Sumba, originally a familial and culturally sanctioned practice, has evolved into a violation of women’s rights, undermining the values and norms inherited from ancestors. This practice has increasingly taken the form of a criminal act involving elements of sexual violence, including forced marriage under the guise of cultural traditions.

Given this context, the aim of this study is to explore how the Sumbanese community perceives the practice of marriage by capture, particularly in light of the significant changes it has undergone. Furthermore, the study seeks to analyze this practice from the perspective of Indonesia’s positive law. The findings are expected to provide policy recommendations to address marriage by capturing, urging local governments and relevant institutions to take active measures to reduce or eliminate this practice. These recommendations will emphasize the protection of human rights, particularly women’s rights, in Sumba.

Additionally, this study aims to deepen the understanding of the phenomenon of marriage by capture in Sumba and contribute to the foundation for protecting women in the region. The insights gathered will serve as a basis for ensuring that such practices are eradicated and that women’s rights are safeguarded.

2. RESEARCH METHODOLOGY

The research employs a normative methodology, aimed at analyzing the existence of customary law in Indonesia, examining how positive law perceives the tradition of marriage by capture in Sumba, and determining the appropriate governmental response to this practice. This method involves the analysis of norms, laws, and principles. Data collection is conducted through legal documents, scholarly journals, and news articles, with conclusions drawn based on existing legal regulations. Normative criticism and interpretation also play a critical role in this approach, contributing to the development of arguments suitable for scientific journals. The study utilizes several approaches, including the statutory approach, the customary law approach, the conceptual approach, the legal

⁴ Irene Uumbu Lolo, “Dari Liturgi Baptisan Menuju Liturgi Kehidupan: Menjadi Gereja Bagi Perempuan Korban Kawin Tangkap,” *Kenosis: Jurnal Kajian Teologi* 6, no. 2 (2020), <https://doi.org/10.37196/kenosis.v6i2.181>.

⁵ “Kronologi Aksi Kawin Tangkap Yang Viral Di Sumba Barat Daya,” CNN Indonesia, 2023, <https://www.cnnindonesia.com/nasional/20230909072838-12-996764/kronologi-aksi-kawin-tangkap-yang-viral-di-sumba-barat-daya>. Download Apps CNN In.

sociology approach, and the case approach. For data collection, the researcher employs library research, gathering information from books, legal statutes, and articles. This method ensures a comprehensive exploration of the subject through the analysis of authoritative sources.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Customary Marriage System in Sumba, East Nusa Tenggara

A customary law society refers to a group of individuals who adhere to unwritten rules governing human behavior in their interactions, rooted in moral principles that are deeply embedded within the community.⁶ Customary law differs from Roman or continental European legal systems as it is pragmatic and realistic, designed to meet the needs of a functionally religious society. It is characterized by the following features:⁷

- a) Communal: The welfare of the community takes precedence over that of individuals.
- b) Constant: Actions in customary law are valid when executed in a binding and immediate manner.
- c) Concrete: Legal actions are recognized as valid only when performed in tangible and observable forms.

Customary law possesses three fundamental characteristics:⁸

- a) Static: Customary law is consistently present within the community.
- b) Dynamic: It adapts to the societal developments and changes over time.
- c) Flexible: Customary law adjusts to meet the evolving needs and aspirations of the community.

Traditions in customary societies emerge in two primary ways, as explained by Piotr Sztompka⁹ in his work on the sociology of social change:

- a) spontaneously and Unexpectedly: Traditions develop through repeated and hereditary practices, often observed through rituals or acts of worship to honor them.
- b) Through Coercion: Traditions may also arise and thrive due to enforcement by influential or authoritative figures within the community.

Customary law plays a vital role in the implementation and resolution of various aspects of traditions. It serves as a guideline for preserving the values and norms handed down

⁶ Djamanat Samosir, *Hukum Adat Indonesia (Eksistensi Dalam Dinamika Perkembangan Hukum Di Indonesia)* (Bandung: Nuansa Aulia, 2013).

⁷ Laksanto Utomo, *Hukum Adat* (Jakarta: PT Raja Grafindo Persada, 2016).

⁸ Sulastriyono Sulastriyono and Sartika Intaning Pradhani, "Pemikiran Hukum Adat Djojodigoeno Dan Relevansinya Kini," *Jurnal Mimbar Hukum* 30, no. 3 (2018): 448–62, <https://doi.org/10.22146/jmh.36956>.

⁹ Piotr Sztompka, *The Sociology of Social Change* (New Jersey: Wiley-Blackwell, 1993), <https://www.wiley.com/en-us/The+Sociology+of+Social+Change-p-9780631182061>.

through generations, highlighting the inseparability of tradition from the rules binding the community.

In Indonesia, customary law is unique in that it is unwritten yet holds the same authority as formal laws, including criminal, civil, and constitutional law. It frequently serves as the foundation for conflict resolution and problem-solving within indigenous communities, underscoring its integral role in the nation's legal system. Beyond being a framework for tradition, customary law aligns with the principles of human rights protection. It ensures that the fundamental rights of individuals are respected and safeguarded. This dual role of upholding customary norms and universal human rights demonstrates the importance of customary law in promoting equality and inclusivity.

Every citizen and community group must be treated equally, with their rights acknowledged and respected without discrimination. This principle of equality fosters social harmony based on mutual respect for Indonesia's cultural and traditional diversity. The integration of customary law and human rights protection establishes an ideal equilibrium in community life.¹⁰

Customary law in Indonesia is constitutionally recognized under Article 18B Paragraph (2) of the 1945 Constitution, which states:

“The state recognizes and respects customary law community units and their traditional rights as long as they still exist and align with societal development and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.”

Indonesian legal culture encompasses three normative traditions: Dutch civil law, Islamic law, and customary law. Customary law is inherently tied to the indigenous communities formed through normative values rooted in regional justice and harmony. Within customary law, the concept of customary marriage holds a significant role in the lives of indigenous communities. Customary marriage serves not only as a binding relationship between two individuals but also as a symbol of unity between the extended families of both parties. It is an integral part of the cultural fabric of indigenous communities in Indonesia.

The primary purpose of customary marriage, particularly in communities with strong kinship ties, is to preserve lineage. This is achieved by maintaining the paternal or maternal heritage in accordance with local traditions. Furthermore, customary marriage reinforces cultural values, fosters social harmony, and ensures peace within traditional communities. As a country rich in ethnic diversity, Indonesia features various traditional marriage practices across its numerous tribes. These differences encompass procedural aspects, symbolic representations, and the values upheld during the marriage process. This cultural diversity reflects the unique identity of each tribe and the rich heritage of the nation.

In addition to procedural differences, the legal implications and ceremonial practices of traditional marriages also vary among tribes. Customary law in each community dictates

¹⁰ Muhammad Dahlan, “Rekognisi Hak Masyarakat Hukum Adat Dalam Konstitusi,” *Undang: Jurnal Hukum* 1, no. 2 (2018): 187–217, <https://doi.org/10.22437/ujh.1.2.187-217>.

the rights and obligations of those involved in the marriage. Traditional marriage exemplifies Indonesia's cultural diversity, which continues to be preserved and respected. Sumba, for instance, adheres to a patrilineal system that emphasizes the father's lineage. Consequently, matters related to marriage and customary settlements are predominantly male-dominated. This system sometimes allows marriage customs to serve as a mechanism for male dominance over women within the institution of marriage.¹¹

A notable example is the practice of "catch marriage," a traditional marriage custom in Sumba, particularly in rural areas such as *Kodi* and *Wanewa*. The people of Sumba regard this practice as part of their ancestral heritage, passed down through generations. Catch marriage involves facilitating a union without formal proposals or agreements, particularly concerning dowries or *belis*. The practice involves capturing a woman in public spaces, such as markets or roadsides, and transporting her to the home of the man initiating the capture. However, this tradition requires the consent of both the man and woman involved, as well as the approval of their respective families.¹²

3.2. Capture Marriage from the Perspective of Positive Indonesian Law

The practice of capture marriage, traditionally regarded as a Sumbanese cultural heritage passed down through generations, inherently involves customary law in its implementation and resolution. However, challenges arise when this practice deviates from its original intent and fulfills elements of criminal acts that infringe upon others' rights. Although Article 18B Paragraph (2) of the 1945 Constitution acknowledges and respects the rights of indigenous peoples and their customary laws, it stipulates that these traditions are valid only insofar as they align with societal development and the principles of positive law.

In its current form, capture marriage has been distorted, diverging from its original tradition. It is increasingly associated with forced marriage, which inflicts significant harm, including violence and injustice, upon Sumbanese women. Victims of forced marriages may endure various forms of violence, including physical, sexual, psychological, and social abuse, often resulting in long-term trauma.¹³ This underscores the urgent need to address issues of violence and violations of women's rights in the context of certain cultural practices and traditions in Indonesia.

The current execution of capture marriage contravenes Indonesian positive law, specifically:

- 1) Law No. 16 of 2019, amending Law No. 1 of 1974 on Marriage (UUP),
- 2) Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), and

¹¹ Samitha Andimas Putri, "Eksistensi Perempuan Tanpa Kawin Paksa," *Neoclassical Legal Review Journal of Law and Contemporary Issues* 2, no. 2 (2023): 19–26, <https://doi.org/10.32734/nlr.v2i2.11518>.

¹² I Made Wiswa Mitra Tresna Utama, "Analisis Kawin Tangkap Sumba Ditinjau Dari Perspektif Hak Asasi Manusia Dan Hukum Nasional," *Yustisi* 11, no. 3 (2024): 135–147, <https://doi.org/10.32832/yustisi.v11i3.17881>.

¹³ Doko, Suwitra, and Sudibya, "Tradisi Kawin Tangkap (Piti Rambang) Suku Sumba Di Nusa Tenggara Timur."

3) Law No. 39 of 1999 on Human Rights (UU HAM).

The coercive nature of capture marriage violates Article 6 Paragraph (1) of the Marriage Law, which states that marriage must be based on the consent of both parties. This article emphasizes that marriage requires prior mutual consent, free from coercion by third parties. Marriage, as an institution, is intended for individuals deemed capable of building a household.¹⁴ However, in the practice of capture marriage, women are forcibly taken from public spaces and brought to the man's home without prior consent.

This practice undermines the dignity of women through acts of violence, including physical force, abduction, and other forms of aggression. Victims often face sexual harassment or even rape, coercing them into accepting marriage proposals under duress.¹⁵ Consequently, women are deprived of their autonomy and freedom to make life choices, particularly in selecting a life partner. Such practices reinforce male dominance within cultural traditions.¹⁶

Additionally, Article 2 of the Marriage Law outlines the legal norms for a valid marriage:

- 1) Marriage is valid if conducted according to the laws of each party's religion and belief.
- 2) Each marriage must be registered in accordance with applicable laws and regulations.

According to these provisions, marriage must satisfy both formal and material requirements, including adherence to legal procedures and the fulfillment of inherent obligations by both parties. Capture marriage, conducted solely under the supervision of customary leaders and without official registration at the Population and Civil Registration Service (Disdukcapil), fails to meet these requirements.¹⁷ Consequently, the state does not fully recognize such marriages as valid in the eyes of the law. This analysis highlights the dissonance between the tradition of capture marriage and the principles of positive law in Indonesia, emphasizing the need for reform to align customary practices with the protection of human rights and legal standards.

The practice of forced marriage not only violates the Marriage Law but also contravenes Article 4 Paragraph (1), Letter (e) of the Sexual Violence Crimes Law (TPKS Law), which categorizes forced marriage as an act of sexual violence subject to legal

¹⁴ Herman Herman et al., "Adat Kawin Tangkap (Perkawinan Paksa) Sebagai Tindak Pidana Kekerasan Seksual," *Halu Oleo Legal Research* 5, no. 1 (2023): 1–12, <https://doi.org/10.33772/holresch.v5i1.217>.

¹⁵ Nabila Maharani, "Pelaksanaan Kawin Paksa Sebagai Tuntutan Adat Dalam Perspektif Hukum Positif Dan Hak Asasi Manusia," *Tarunalaw: Journal of Law and Syariah* 20, no. 1 (2024): 25–34, <https://doi.org/10.54298/tarunalaw.v2i01.168>.

¹⁶ Adinda Agis Fitria Cahyani and Nadia Elvin Eka Azaria, "Sumba Tribal Catch Marriage Tradition in The Perspective of Legal Pluralism," *Jurnal Panah Keadilan* 3, no. 1 (2024): 48–58, <https://doi.org/10.57094/jpk.v3i1.1533>.

¹⁷ Rambu Susanti Mila Maramba et al., "Piti Maranggangu (Kawin Tangkap) Dalam Perspektif Hukum," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 7, no. 1 (2022): 46–60, <http://dx.doi.org/10.22373/justisia.v7i1.12869>.

punishment.¹⁸ In practice, women are often forcibly taken, physically handled, and subjected to violations of their bodily autonomy. Marriages carried out under coercion, which harm one of the parties, meet the criteria for a criminal act of sexual violence and are punishable by up to 9 years of imprisonment and a maximum fine as stipulated in the TPKS Law.

Forced marriage also violates the Human Rights Law, particularly Article 33 Paragraph (1), which asserts that no individual has the right to deprive another of their right to be free from torture, punishment, or cruel treatment that degrades their status and dignity as a human being.¹⁹ This provision explicitly prohibits any form of torture, cruel behavior, or actions that demean human dignity. Victims of forced marriage often endure severe physical and psychological abuse, resulting in cruel treatment that degrades their inherent human worth.

Furthermore, Article 34 of the Human Rights Law states that no person may be arrested, detained, forcibly excluded, exiled, or arbitrarily banished. This clause underscores the illegitimacy of capture marriage practices, which involve coercion and arbitrary detention by men, and classifies them as acts of violence against women. From a human rights perspective, the custom of capture marriage demands decisive action that prioritizes the protection and dignity of women.²⁰

Criminal law also addresses the act of kidnapping, which aligns with the practice of capture marriage. Article 328 of the Criminal Code stipulates that taking someone away with the intent of placing them under another's control and causing suffering constitutes a criminal act punishable by up to 12 years of imprisonment. Similarly, Article 454 Paragraph (2) states that any person who takes away a woman by trickery, violence, or threat of violence, intending to exercise control over her within or outside marriage, shall be punished by up to 9 years of imprisonment. Paragraph (3) of the same article specifies that prosecution for this crime requires a complaint from the woman or her husband. However, women often refrain from reporting such acts due to fear of violating customary traditions and community norms.

The practice of capture marriage reflects entrenched male dominance over women, positioning women as powerless and obligated to comply with traditional norms. This systemic power imbalance renders women the primary victims of such customs. Resistance from women is often stigmatized as defiance of ancestral traditions, perpetuating their subjugation. This form of marriage deprives women of the opportunity to exercise their rights and freedoms, undermining the principle of equality between genders.²¹

¹⁸ Juvani Leonardo Fiore Mongkaren, Debby Telly Antow, and Rudolf Sam Mamengko, "Tindak Pidana Pemaksanaan Perkawinan Menurut Undang-Undang Nomor 12 Tahun 2022," *Lex Crimen* 12, no. 3 (2023): 1–11, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/47970>.

¹⁹ Utama, "Analisis Kawin Tangkap Sumba Ditinjau Dari Perspektif Hak Asasi Manusia Dan Hukum Nasional."

²⁰ Andraviani Fortuna Umbu Laiya, Karolus Kopong Medan, and Aksi Sinurat, "Analisis Pergeseran Budaya Kawin Tangkap Terhadap Perempuan Dalam Pemikiran Legal Feminist Di Kabupaten Sumba Tengah," *Unes Law Review* 6, no. 3 (2024): 8035–50, <https://doi.org/10.31933/unesrev.v6i3>.

²¹ Masthuriyah Sa'dan, "Menakar Tradisi Kawin Paksa Di Madura Dengan Barometer Ham," *Musāwa Jurnal Studi Gender Dan Islam* 14, no. 2 (2015): 143–56, <https://doi.org/10.14421/musawa.2015.142.143-156>.

CONCLUSION

There is nothing inherently wrong with marriage customs in a region, including capture marriage, as long as there is mutual agreement between both parties and no coercion from any side. The issue arises when the practice of capture marriage evolves and meets the criteria of a criminal act, violating women's rights. Under Indonesian positive law, it is evident that this practice often conflicts with various laws and regulations, including Law No. 1 of 1974 on Marriage (UUP), Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), and Law No. 39 of 1999 on Human Rights (UU HAM).

The explanation of how capture marriage conflicts with numerous laws and regulations is sufficient to demonstrate that this practice exceeds the boundaries outlined in Article 18B, Paragraph (2) of the 1945 Constitution, which asserts that the state recognizes and respects the unity and rights of indigenous peoples, as long as they align with the principles of the state enshrined in law. Since the practice of capture marriage no longer adheres to the principles of the state and the law, it should be abandoned. Furthermore, with the evolution of societal norms, forced marriage is incompatible with the protection of women's rights in contemporary society.

The author suggests that the practice of capture marriage be eradicated in general. While the original practice carried out by ancestors may not have violated human rights, in the current era, capture marriage no longer aligns with Article 18B, Paragraph (2) of the 1945 Constitution due to the violation of women's rights. The state will respect customs only as long as they are in accordance with values regulated by positive law. Additionally, many young people misinterpret this practice and fail to follow the correct procedures, unaware of the physical and mental harm that such actions can inflict on others in the pursuit of unilateral marriages.

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